ETS: SCIENTIFIC AND LEGAL ASPECTS

Executive Summary of Opinions and Viewpoints

Science

- Chemistry: The often used phrase "passive smoking" is misleading. It suggests that a non-smoker has equivalent exposure to that of a smoker. This is not the case. Environmental Tobacco Smoke (ETS) is hundreds of times more dilute than a smoker's smoke and it undergoes extensive chemical and physical changes before it reaches non-smokers.

- Exposure: Recent scientific studies report that non-smoker's exposure to ETS is quite minute in "real world" settings. For example, one estimate is that it would take between 260 and 1000 hours for a non-smoking worker to be exposed to the equivalent of a single cigarette in a typical workplace. Another estimate is that it would take 300 hours of dining in a restaurant permitting smoking or 100 hours in a smoky bar to be exposed to the equivalent of 1 cigarette.

- Epidemiology: A distinct minority of the spousal studies examining ETS/lung cancer (about 15%) have reported a small overall statistical association between being married to a smoker and lung cancer. These statistical associations (which by their nature cannot prove causation) are very weak and many scientists and physicians worldwide question whether or not the association is real or reliable. Accordingly they do not believe that it has been demonstrated that ETS causes chronic diseases in non-smokers.

- ETS Debate in Context: If, as anti-smoking advocates claim, ETS exposure results in a small increased risk of lung cancer (in the range of about 19%), then it can also be claimed that other studies may demonstrate that keeping pet birds increases the risk of lung cancer by 570%, that high dietary saturated fat increases the risk by 500%, cooking with peanut or rapeseed oil increases the risk by 170% and frequent consumption of whole milk increases the risk by 110%.

- Workplace/Social Settings Studies: 14 studies have examined whether workplace exposure to ETS increases the risk for lung cancer in non-smokers. 12 of these 14 report no statistically significant association between ETS exposure in the workplace and lung cancer. The "case" against ETS in social settings is equally weak where 9 of 10 published risk estimates report no statistically significant association.

Law

- No law specifically requires an employer or a member of the hospitality industry to impose a general ban on smoking at work or in "public places" like restaurants and taverns. There are laws prohibiting smoking, however, in special situations such as in close proximity to flammable substances, food preparation areas, and in elevators, for example.

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- It is often incorrectly stated that it has been proven in Australian legal cases that ETS causes chronic diseases such as lung cancer or heart disease in non-smokers. No court in Australia or elsewhere has resolved (or is capable of resolving) the scientific, medical and health issues that have been raised concerning ETS. Two recent decisions indicate this point.

- Burswood Resort Casino Case: This landmark court decision handed down in September 1993 considered whether Casino employees were at a health risk from respiratory illness, impairment or reduced lung function due to ETS exposure. The court heard and considered nine days of evidence from technical and medical experts and dismissed the Department of Health's claims against the Casino, stating as follows:

> "Whilst ETS is annoying and of discomfort to non-smokers it has not been proved at the required standard, or at all, in this prosecution, that it is a risk to the health of the employees at the Casino." (Reasons for Judgement, page 9).

- AFCO vs TIA: It is commonly stated that Justice Morling's decision in AFCO demonstrated that ETS causes lung cancer, heart disease and other chronic diseases in non-smokers. On appeal, however, the Full Court Judgement revealed that Justice Morling "embarked upon the wrong enquiry". For example, Justice Foster commented as follows:

> "It may be observed that the evidence of these scientists clearly demonstrated that in the highest levels of science there was disagreement as to whether passive smoking could cause disease in non-smokers ..... It was not a disagreement which the learned primary judge (i.e., Justice Morling) or this court could reasonably resolve." (Foster J, page 19).

Conclusion: Science/Law

- We believe that neither legal nor scientific considerations require or justify governmentally imposed smoking restrictions or bans in workplaces or public places such as hospitality venues. Nonetheless, some people find ETS annoying, which is why we encourage smokers to smoke with courtesy and common-sense. We are not suggesting that smoking be allowed in all places or at all times. We firmly believe however that, both smokers and non-smokers can and should be accommodated whether that's through separate sections for smokers and non-smokers or otherwise.

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